

**CITY OF SPRINGDALE**  
**Committee Agendas**  
**Tuesday, January 21<sup>st</sup>, 2020**  
**Council Chambers**  
**City Administration Building**  
**Meetings begin at 5:30 P.M.**

**Ordinance Committee by Chairman Mike Overton:**

1. **An Ordinance** amending Chapter 78 of the Code of Ordinances of the City of Springdale, Arkansas; Declaring an emergency; and for other purposes. Ordinance presented by Ernest Cate, City Attorney. Pg. 2

**Finance Committee by Chairman Jeff Watson**

2. **A Resolution** authorizing an expenditure from the court automation fund for technology related expenses for the Springdale Department of the Washington County District Court. Resolution presented by Ernest Cate, City Attorney. Pgs. 3 - 5
3. **An Ordinance** authorizing the Mayor and City Clerk to enter into a contract with the Downtown Springdale Alliance to promote, preserve, and enhance Downtown Springdale, and to facilitate the implementation of the Downtown Master Plan; to waive Competitive bidding; and for other purposes. Ordinance presented by Jeff Watson. Pgs. 6 - 12

**Street and Capital Improvements Committee by Chairman Rick Evans:**

4. **A Resolution** authorizing the execution of a Construction Manager Contract for Road Improvements. Resolution presented by Wyman Morgan, Financial Services Director. Pgs. 13 - 31
5. **A Resolution** authorizing the renovation of four (4) bathrooms in the Springdale Public Library. Resolution presented by Marcia Ransom, Library Director. (Tabled from 1/6/2020 Committee Meeting.) Pgs. 32 - 34
6. **A Resolution** authorizing the conveyance of land owned by the City of Springdale to JHT, LLC, in exchange for the dedication of land for a public street. Resolution presented by Ernest Cate, City Attorney. Pgs. 35 - 38
7. **A Resolution** authorizing the execution of a Construction Contract for the extension of Ford Avenue. Resolution presented by Brad Baldwin, Public Works Director. Pg. 39

**Police and Fire Committee by Chairman Brian Powell:**

8. **A Discussion** of construction progress on the Fire Training Facility.

**Personnel Committee by Chairman Kathy Jaycox:**

9. **A Resolution** amending Section 3.5 of the Personnel and Procedures Manual for the City of Springdale, Arkansas. Resolution presented by Gina Lewis, Human Resources Director. Pgs. 40 - 43

That which is underlined is added.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING CHAPTER 78 OF THE  
CODE OF ORDINANCES OF THE CITY OF SPRINGDALE,  
ARKANSAS; DECLARING AN EMERGENCY; AND FOR  
OTHER PURPOSES.**

**WHEREAS**, Chapter 78 of the Code of Ordinances of the City of Springdale, Arkansas, contains the regulations pertaining to City parks and park properties in the City of Springdale;

**WHEREAS**, Section 78-47 of the Code of Ordinances of the City of Springdale, Arkansas, contains the regulations pertaining to bringing or consuming alcoholic beverages into a City park or park properties in the City of Springdale;

**WHEREAS**, the City wishes to allow the possession or consumption of alcoholic beverages at certain designated events held in Walter Turnbow Park and approved by the City public events advisory committee;

**WHEREAS**, it is in the best interest of the City of Springdale, Arkansas, for the City Council of the City of Springdale, Arkansas, to amend Section 78-47 of the Code of Ordinances of the City of Springdale, Arkansas.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE  
CITY OF SPRINGDALE, ARKANSAS:**

**Section 1:** Section 78-47 of the Code of Ordinances of the City of Springdale is hereby amended to read as follows:

**Sec. 78-47. Intoxicating beverages.**

It shall be unlawful to bring or consume alcoholic beverages with a city park, except at events approved by the City through the Public Events Advisory Committee and taking place at Walter Turnbow Park. No person shall enter a park when under the influence of intoxicating beverages.

**Section 2:** All other provisions of Chapter 78 of the Code of Ordinances of the City of Springdale, Arkansas, not specifically amended by this Ordinance shall remain in full force and effect.

**Section 3: Emergency Clause.** It is hereby declared that an emergency exists and this ordinance, being necessary for the preservation of the health, safety and welfare of the citizens of Springdale, Arkansas, shall be in effect immediately upon its passage and approval.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ernest B. Cate, City Attorney

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING AN EXPENDITURE FROM THE  
COURT AUTOMATION FUND FOR TECHNOLOGY RELATED  
EXPENSES FOR THE SPRINGDALE DEPARTMENT OF THE  
WASHINGTON COUNTY DISTRICT COURT**

**WHEREAS**, under Ark. Code Ann. Section 16-13-704(b)(3)(D)(i), expenditures from the district court automation fund shall be approved by a district judge and shall be authorized and paid under state laws governing the appropriation and payment of county or municipal expenditures by the governing body that contributes to the expense of the district court;

**WHEREAS**, under Ark. Code Ann. Section 16-13-704(b)(3)(D)(ii), the expenditures from the district court's automation fund may be made for indirect expenses related to implementation of new court-related technology, including overtime pay, personnel or travel expenses, and technology-related supplies;

**WHEREAS**, the Springdale Police Department has recommended to the Springdale Court that certain bullet resistant metal be purchased and installed in the screening area of the entrance into the Court;

**WHEREAS**, the metal desired to be purchased is technologically constructed to provide extra protection from gun fire (bullet resistant metal) and this bullet resistant metal can be moved into the new court building when constructed;

**WHEREAS**, the Court has the necessary funds in its court automation fund to pay for cost and installation of the bullet resistant metal, and the cost will not exceed \$2,000 (see quotes from Boyd Metals and Mayo Custom Metal Fabrication, Inc. incorporated herein by reference);

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SPRINGDALE** that the Springdale Court (Springdale Department of Washington County District Court) is authorized to purchase and install certain bullet resistant metal at a total cost not to exceed \$2,000.00,

**PASSED AND APPROVED** this \_\_\_\_\_ day of January, 2020.

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ernest B. Cate, City Attorney



*Your Industrial Partner for Metal Fabrication*

P.O. BOX 365  
SPRINGDALE AR. 72765-0365  
PHONE 479-751-4819  
FAX 479-751-2753  
E-mail j.nicholas@cmayo.com

## PROPOSAL

**To: SPD**

**From: Jimmy Nicholas**

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**Attn: Kerry**

**Date: 1-7-20**

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**Re:**

**Job#**

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**C.MAYO TO PROVIDE LABOR AND MATERIAL AS FOLLOWS**

**Weld customers AR 500 steel plates**

**Price not to exceed \$250.00**

**Thank you  
Jimmy Nicholas**

QUOTATION

No.1597474 PG 1 OF 1



Toll Free: 1-800-323-8806  
600 South 7th Street  
Fort Smith, AR 72901  
Local: 479-782-9060  
Fax: 479-782-0424

QUOTED TO  
SPRINGDALE POLICE

PICK-UP LOCATION  
BOYD METALS OF FORT SMITH  
600 SOUTH 7TH STREET  
FORT SMITH, AR 72901

JOB NAME  
CARY BOSTIAN  
JOB NAME  
CARY BOSTIAN  
RESALE #  
BUYER  
SPRINGDALE POLICE  
SALES REP  
PAM DEAN  
PURCHASE ORDER #  
QUOTE  
ORD. ENTRY  
DO  
TERMS  
C.O.D.

QUOTE DATE  
01/02/2020  
EXPIRES  
01/07/2020  
SHIP VIA  
WILL CALL  
ROUTE  
WILL CALL

LINE	QUANTITY	DESCRIPTION	WIDTH	LENGTH	WEIGHT	UNIT PRICE	TOTAL
1	2 PCS	CP38AR500 PLATE CARBON 3/8 AR500 PLASMA CUT THE FOLLOWING 1PC @ 24" X 36" 1PC @ 24" X 48" 1PC @ 33.75" X 87" 1PC @ 4" X 48" 2 WEEK LEAD TIME	48"	96"	981	1,520.0000/LOT	1,520.00
All quotes firm until close of business day. Quotes are subject to material availability at time of order. Pricing subject to confirmation at time of order.							

TOTAL WT	SUBTOTAL	CUTTING	STATE	CO. TAX	CITY TAX	TOTAL
981 LBS	\$1,520.00	\$0.00	\$98.80	\$19.00	\$30.40	\$1,668.20

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A CONTRACT WITH THE DOWNTOWN SPRINGDALE ALLIANCE TO PROMOTE, PRESERVE, AND ENHANCE DOWNTOWN SPRINGDALE, AND TO FACILITATE THE IMPLEMENTATION OF THE DOWNTOWN MASTER PLAN; TO WAIVE COMPETITIVE BIDDING; AND FOR OTHER PURPOSES.

**WHEREAS**, in 2015, the City Council for the City of Springdale, Arkansas, passed an Ordinance establishing the Downtown Master Plan for downtown Springdale;

**WHEREAS**, the intent of the Downtown Master Plan is to promote, preserve, and enhance the development, preservation, and beautification of Downtown Springdale, which benefits all the residents of the City of Springdale;

**WHEREAS**, incorporated herein by reference and attached hereto as Exhibit "A" is a contract between the City of Springdale and the Downtown Springdale Alliance ("the DSA"), allowing for the DSA to perform certain services for the City of Springdale related to the Downtown Master Plan, as set out in the contract, for the total sum of \$50,000.00;

**WHEREAS**, because the DSA is actively involved in promoting, preserving, and enhancing Downtown Springdale, they are in a unique position to provide the services to the City of Springdale, and therefore, the requirement of competitive bidding should be waived as it is not deemed feasible or practical in this case;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SPRINGDALE, ARKANSAS:**

**Section 1:** That the Mayor and City Clerk are hereby authorized to enter into said Contract, which is incorporated herein by reference, with the Downtown Springdale Alliance, and to pay the sum not to exceed \$50,000.00 to the Downtown Springdale Alliance, as set out in the Contract, said money to be paid from general fund.

**Section 2:** That because of the exceptional circumstances set out herein, competitive bidding is not deemed feasible or practical for the reasons previously stated herein, and is therefore waived.

**Section 3: Emergency Clause.** It is hereby declared that an emergency exists and this ordinance, being necessary for the preservation of the health, safety and welfare of the citizens of Springdale, Arkansas, shall be in effect immediately upon its passage and approval.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
Ernest B. Cate, CITY ATTORNEY

## CONTRACT FOR SERVICES

This Contract for Services entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Springdale, Arkansas, (hereafter "City") and Downtown Springdale Alliance (hereafter "DSA") pursuant to the following terms and conditions:

WHEREAS, DSA is a not-for-profit entity organized exclusively to promote, encourage, develop, engage participation in and support the beautification and preservation of the City of Springdale downtown core and surrounding areas; and

WHEREAS, a downtown area has been identified by the City consisting of approximately 675 acres from U.S. Highway 71-B on the west to Arkansas Highway 265 on the east and Huntsville Avenue on the north and Quandt Avenue/Caudle Avenue on the south (hereafter sometimes referred to as "Downtown"); and

WHEREAS, DSA has specifically designated Downtown as that part of Springdale to devote its attention to the promotion, preservation, enhancement, engagement, business development, and marketing; and

WHEREAS, DSA has previously engaged in a contract for the City, and through this agreement, seeks to continue those services in a defined manner by proving services relevant to City projects in Downtown; and

WHEREAS, the promotion, development, enhancement, engagement, marketing and business development of Downtown is vital to City in that a vibrant, healthy, active, commercial and inhabited Downtown is necessary for the future growth and continued sustainability of City; and

WHEREAS, City has undertaken to construct public facilities Downtown consisting of a revitalization of Shiloh Square, Realignment of Razorback Regional Greenway across Emma Avenue, and connecting Downtown to Mt. Fitzgerald via protected bike lanes; and

WHEREAS, in order to fund and maintain such public facilities and to enact the Downtown Master Plan, it is vital to have a vibrant Downtown with an infrastructure that promotes the Downtown and to have a tax base both in terms of ad valorem tax and sales taxes that will not only fund and promote City, but the Downtown and general services available to City to promote the general safety, preserve the health, promote the prosperity and improve the order, comfort and convenience of the City and its inhabitants; and

WHEREAS, private entities including Tyson Foods, Inc., have moved offices Downtown, which requires an expansion of not only infrastructure provided by the public sector, but also services provided by private investment, including but not limited to retail, entertainment, restaurants, offices, medical services, and the like to serve those persons who are, and will be, inhabiting Downtown, as well as working therein; and

WHEREAS, there are numerous vacant buildings in the Downtown which if occupied by the private sector will provide a solid tax base both in terms of ad valorem taxes and sales taxes and otherwise, such as vacancy Downtown could cause a blight upon a portion of the City thereby having a negative impact both in terms of safety and the health and welfare of its inhabitants; and

WHEREAS, City does not have the ability to provide the services to be rendered as outlined herein below and has no staff nor office in the City devoted to such services; and

WHEREAS, no other entity, public or private, is providing the services to the inhabitants and citizens of the City of Springdale, Arkansas, nor to the City that are to be provided herein; and

WHEREAS, City has the inherent authority to enter into this Contract pursuant to A.C.A. § 14-54-101 and §14-55-102; and

WHEREAS, services provided herein by DSA are unique and City finds it impractical and unfeasible to obtain the services provided herein through a formal competitive bidding and has, by appropriate action of its City Council, waived such requirement of bidding; and

WHEREAS, pursuant to Arkansas law, it is required that a formal contract be developed between City and DSA to establish that City is not merely making a contribution to DSA, but that City will and shall receive unique benefits from this contractual agreement;

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the parties as follows:

1. CONSIDERATION: City shall pay and DSA agrees to accept a sum in the amount of \$50,000.00 as consideration for the services to be rendered as set forth in this Contract to be paid bi-annually during the First business



Monday of Second Quarter and the First business Monday of the Fourth Quarter.

2. TERM: The term of this Contract shall be from January 1, 2020, to December 31, 2020.
3. SERVICES TO BE PROVIDED: DSA's primary purpose, which is aligned with the City's goals, is "To Promote a Vibrant Downtown Springdale. In consideration of the funds paid by the City, DSA will provide the following specific services:
  - a. Public Space, Community Events Calendar:
    - i. Organize, and advertise public events through operation, updating, and maintenance of the Downtown Public Events Calendar.
    - ii. Accept, review, and approve or disapprove all requests to reserve Shiloh Square and Walter Turnbow Park.
    - iii. Accept, review, and approve or disapprove requests for public and private events that result in the closing of Emma Avenue to vehicular traffic.
    - iv. Through the Public Events Committee, coordinate and approve applications for public events wishing to use public spaces within the Downtown area. The Committee is comprised of city staff from Police, Planning, Parks, Public Works, & Public Relations.
    - v. Provide liaison services to property owners and interested parties for the development, implementation, and revision of shared public space use by assisting with development and ongoing revision of rules and regulations for Downtown public space use.
    - vi. It is anticipated that DSA will provide acceptance, review, and approval or disapproval for all requests to reserve Luther George Park, following planned revitalization and renovation.
  - b. Contact point for Downtown Development:
    - i. Assist owners and interested parties in answering questions related to Downtown Master Plan.
    - ii. Serve as ambassador to new developments, and re-developments for properties within Downtown.
    - iii. Consult with land owners, interested parties, and City on review, creation, and implementation of new codes and ordinances for Downtown, and alignment with the Downtown Master Plan.

- iv. Continued organizing outreach and public meetings for advertising, educating, and implementing the Downtown Master Plan on a semi-annual basis at a minimum, such meetings are to promote developments in alignment with the Downtown Master Plan, and next steps in pursuit of the Downtown Master Plan.
- v. Work with the City regarding the possible creation of Designated Entertainment Districts, pursuant to Act 812 of 2019 (codified at Ark. Code Ann. §14-54-1412).
- c. Beautification
  - i. DSA will serve a consultant role with City horticulturist and City departments in furthering greening efforts in Downtown, and public spaces.
- d. Economic Services
  - i. Actively engage in business recruitment, retention and expansion in Downtown, focusing on retail, restaurant and entertainment needs to support a growing workforce
  - ii. Be a point of contact between City and Downtown businesses related to City infrastructure improvement efforts, from street closures, utility service work, greening efforts, public space improvements.

City acknowledges, understands and agrees that several of these functions are ongoing and may continue beyond the term of this contract.

4. REPORTING: DSA shall submit, not less than bi-annually, reports prepared by DSA to City identifying and accounting for social engagement through metrics; public space events processed by DSA, Public Events Committee and reflected on Public Events Calendar; meetings by DSA personnel with residents, Downtown businesses and businesses outside of Downtown related to development in Downtown; and business retention and expansion data when available.
5. STATUS OF DSA: The parties agree that DSA shall be deemed an independent contractor in every respect and shall take all steps at its expense and pursuant to the use of its materials and its method of operations, including those tasks requested by City. City does not, and will not, assume any responsibility for services provided by DSA. Furthermore, the parties mutually agree and understand that City has no financial interest in DSA and is not deemed to be or construed to be a partner, joint venture or investor in DSA.

6. NON-ASSIGNMENT: DSA understands and agrees that the services to be rendered are to be rendered by DSA and shall not be subcontracted or assigned to any other party or person without the express written consent of City.
7. COMPLIANCE WITH LAW: DSA agrees that in the performance of this Contract, it shall comply with all local, state and federal laws and regulations, including but not limited to bans on discrimination on the basis of race, sex, color, national origin, gender or disability. DSA further recognizes that, as it relates to the specific funds provided herein by the City, some of its activities are likely subjected to the Freedom of Information Act ("FOIA"), and accordingly, it will comply with the FOIA as it relates to requests for information pertaining to the use of such funds. The funds given in consideration of the serviced by DSA in the agreement are exclusive to the implementation of the consideration by DSA. Funds provided herein are separate from DSA other non-FOIA revenues, donations, and compensation. DSA is not a public entity, is not primarily funded by public funds, and is otherwise a private independent entity separate and apart from City.
8. DISCLAIMER: The parties hereto acknowledge that this Contract is for the providing of the services listed herein and this Agreement in no way suggests the City endorses or agrees with any position taken by DSA or any groups affiliated with it.
9. NON-APPROPRIATION: DSA recognizes that the funding provided for in this Contract is contingent upon the appropriation of public funds by the City. If City does not appropriate monies for this Contract, there shall be no penalty assessed against City and this Contract shall be null, void and of no effect.
10. COMPLETE AGREEMENT: It is agreed that neither party hereto is relying upon any oral or written information or representations made by the other prior to the signing of this Contract unless expressly provided herein, and that this Contract constitutes the entire agreement between the parties and same shall not be hereafter amended or modified unless reduced to writing and signed by the parties hereto.
11. SEVERABILITY: If any provision of this Contract is declared to be invalid or unenforceable, the remainder of this Contract and the application of such provision to the other party of circumstances shall not be affected thereby,

the provisions of this Contract being severable in any such instance. If any sentence or portion shall be adjudged to be invalid or unenforceable, then that article shall be deemed to be amended to delete therefrom the portion adjudicated to be invalid or unenforceable.

12.AUTHORITY: The parties hereto agree that by the execution of this Contract, the persons signing this Contract herein below have been authorized by the respective bodies to lawfully enter into this Contract and bind each of the parties hereto.

IN WITNESS WHEREOF, the parties have set their hands the date first above written.

CITY OF SPRINGDALE

By: \_\_\_\_\_  
Mayor

WITNESS:

\_\_\_\_\_  
City Clerk

City Seal:

DOWNTOWN SPRINGDALE ALLIANCE

By: \_\_\_\_\_  
Jill Dabbs, Executive Director

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING THE EXECUTION  
OF A CONSTRUCTION MANAGER CONTRACT  
FOR ROAD IMPROVEMENTS**

**WHEREAS**, Arkansas Statute 19-11-801 provides for the employment of a construction manager for public improvement projects, and

**WHEREAS**, the City of Springdale is planning to make improvements to Spring Street between Johnson Ave. and Huntsville Ave. that will also include parking areas, and

**WHEREAS**, there would be several opportunities for costs savings if the road improvements and the construction of the park were handled by the same construction manager, and

**WHEREAS**, the coordination of this project with the construction of the Springdale Municipal Campus project is critical to the efficient and timely completion of both projects, and

**WHEREAS**, Milestone Construction Company, LLC has agreed to furnish these services for a fee of \$5,000 for preconstruction services and a fee of 4.75% of the cost of the work for construction services.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS**, that the Mayor is hereby authorized to execute a contract for construction manager services with Milestone Construction Company, LLC for services to be provided relating to improvements to Spring Street and the related parking areas.

**PASSED AND APPROVED** this 28<sup>th</sup> day of January, 2020.

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ernest B. Cate, City Attorney

# **AIA**® Document A133™ – 2009

## **Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price**

**AGREEMENT** made as of the 8th day of January in the year 2020  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name, legal status and address)

City of Springdale  
201 Spring Street  
Springdale, AR 72764

and the Construction Manager:  
(Name, legal status and address)

Milestone Construction Company, LLC  
2002 S. 48th Street, Suite A  
Springdale, AR 72762

for the following Project:  
(Name and address or location)

Spring Street Improvements (Between Johnson Avenue and Huntsville Avenue)  
Spring Street  
Springdale, AR 72764

The Engineer:  
(Name, legal status and address)

ESI  
1207 South Old Missouri Road  
Springdale, AR 72764

The Owner's Designated Representative:  
(Name, address and other information)

Wyman Morgan  
201 Spring Street  
Springdale, AR 72764

The Construction Manager's Designated Representative:  
(Name, address and other information)

Sam Hollis  
2002 S. 48th Street, Suite A  
Springdale, AR 72762

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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**User Notes:**

(3B9ADA37)

The Engineer'sEngineerEngineer Designated Representative:  
*(Name, address and other information)*

Brian Moore  
1207 South Old Missouri Road  
Springdale, AR 72764

The Owner and Construction Manager agree as follows.



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## EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Engineer/Engineer and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

#### § 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Engineer/Engineer and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

#### § 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

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## ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Engineer, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### § 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

### § 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Engineer and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Engineer on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Engineer on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Engineer's review and the Owner's acceptance. The Construction Manager shall obtain the Engineer's approval for the portion of the Project schedule relating to the performance of the Engineer's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Engineer's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

### § 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

### § 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Engineer, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Engineer's review and Owner's approval. If the Engineer or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Engineer progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Engineer, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Engineer's review and the Owner's approval. The Construction Manager shall inform the Owner and Engineer when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

### § 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Engineer's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager

shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

#### **§ 2.1.8 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Engineer and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Engineer may require.

#### **§ 2.1.9 Notices and Compliance with Laws**

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

#### **§ 2.2 Guaranteed Maximum Price Proposal and Contract Time**

**§ 2.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Engineer, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

**§ 2.2.2** To the extent that the Drawings and Specifications are anticipated to require further development by the Engineer, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

**§ 2.2.3** The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

**§ 2.2.4** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

**§ 2.2.5** The Construction Manager shall meet with the Owner and Engineer to review the Guaranteed Maximum Price proposal. In the event that the Owner and Engineer discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.



§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Engineer. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Engineer to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Engineer of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

## § 2.3 Construction Phase

### § 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

### § 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Engineer. The Owner shall then determine, with the advice of the Construction Manager and the Engineer, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

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§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Engineer.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Engineer a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Engineer, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Engineer, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Engineer and shall provide this information in its monthly reports to the Owner and Engineer, in accordance with Section 2.3.2.7 above.

#### § 2.4 Professional Services

Section 3.12.10 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

#### § 2.5 Hazardous Materials

Section 10.3 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

### ARTICLE 3 OWNER'S RESPONSIBILITIES

#### § 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Engineer.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Engineer. The Owner and the Engineer, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.



§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

### § 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Engineer does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

### § 3.3 Engineer

The Owner shall retain an Engineer to provide services, duties and responsibilities as described in AIA Document B133™-2014, Standard Form of Agreement Between Owner and Engineer, Construction Manager as Constructor Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Engineer, and any further modifications to the agreement.

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

### § 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:  
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

\$5,000

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within twelve ( 12 ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

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§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty ( 30 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.  
(Insert rate of monthly or annual interest agreed upon.)

5 % five

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:  
(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

4.75% of the Cost of the Work

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

4.75%

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

15%

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed ninety-five percent ( 95 % ) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:  
(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
TBD		

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.  
(Insert specific provisions if the Construction Manager is to participate in any savings.)

100% of savings under the GMP to returned to Owner

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Engineer may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General



Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

**§ 5.3.2** Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

**§ 5.3.3** In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

**§ 5.3.4** In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

**§ 5.3.5** If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## **ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE**

### **§ 6.1 Costs to Be Reimbursed**

**§ 6.1.1** The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

**§ 6.1.2** Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

### **§ 6.2 Labor Costs**

**§ 6.2.1** Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

**§ 6.2.2** Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

**§ 6.2.3** Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

**§ 6.2.4** Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

**§ 6.2.5** Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

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### **§ 6.3 Subcontract Costs**

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

### **§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ 6.4.1** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

**§ 6.4.2** Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### **§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ 6.5.1** Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

**§ 6.5.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

**§ 6.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ 6.5.4** Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

**§ 6.5.5** That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

**§ 6.5.6** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

### **§ 6.6 Miscellaneous Costs**

**§ 6.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

**§ 6.6.2** Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

**§ 6.6.3** Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

**§ 6.6.4** Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

**§ 6.6.5** Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of

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the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

**§ 6.6.6** Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

**§ 6.6.7** Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

**§ 6.6.8** Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

**§ 6.6.9** Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

#### **§ 6.7 Other Costs and Emergencies**

**§ 6.7.1** Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

**§ 6.7.2** Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007.

**§ 6.7.3** Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

**§ 6.7.4** The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

#### **§ 6.8 Costs Not To Be Reimbursed**

**§ 6.8.1** The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

#### **§ 6.9 Discounts, Rebates and Refunds**

**§ 6.9.1** Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

**§ 6.9.2** Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

#### **§ 6.10 Related Party Transactions**

**§ 6.10.1** For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

**§ 6.10.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

#### **§ 6.11 Accounting Records**

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

### **ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

#### **§ 7.1 Progress Payments**

**§ 7.1.1** Based upon Applications for Payment submitted to the Engineer by the Construction Manager and Certificates for Payment issued by the Engineer, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

**§ 7.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

**§ 7.1.3** Provided that an Application for Payment is received by the Engineer not later than the 25th day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 15th day of the following month. If an Application for Payment is received by the Engineer after the application date fixed above, payment shall be made by the Owner not later than twenty ( 20 ) days after the Engineer receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*



§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Engineer to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Engineer may require. This schedule, unless objected to by the Engineer, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

1. Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
2. Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
3. Add the Construction Manager's Fee, less retainage of ten percent ( 10 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
4. Subtract retainage of ten percent ( 10 %) from that portion of the Work that the Construction Manager self-performs;
5. Subtract the aggregate of previous payments made by the Owner;
6. Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
7. Subtract amounts, if any, for which the Engineer has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Engineer shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Engineer has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Engineer has made

Init.

exhaustive or continuous on-site inspections; or that the Engineer has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## **§ 7.2 Final Payment**

**§ 7.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- 1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- 2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- 3 a final Certificate for Payment has been issued by the Engineer.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Engineer's final Certificate for Payment, or as follows:

**§ 7.2.2** The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Engineer by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Engineer will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Engineer's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Engineer is not responsible for verifying the accuracy of the Construction Manager's final accounting.

**§ 7.2.3** If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Engineer's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Engineer's final Certificate for Payment.

**§ 7.2.4** If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

## **ARTICLE 8 INSURANCE AND BONDS**

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007. *(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)*

Init.



Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
General Liability	\$1,000,000
Automobile Liability	\$1,000,000
Umbrella Liability	\$7,000,000
Workers Compensation	\$1,000,000
Payment and Performance Bonds	100% of Contract Value

### ARTICLE 9 DISPUTE RESOLUTION

**§ 9.1** Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

**§ 9.2** For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

☒ **[ X ]** Arbitration pursuant to Section 15.4 of AIA Document A201–2007

☐ **[ ]** Litigation in a court of competent jurisdiction

☐ **[ ]** Other: *(Specify)*

### § 9.3 Initial Decision Maker

The Engineer will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker. *(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Engineer.)*

### ARTICLE 10 TERMINATION OR SUSPENSION

#### § 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

**§ 10.1.1** Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

**§ 10.1.2** In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 4.1.

**§ 10.1.3** If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

#### **§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price**

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201-2007.

**§ 10.2.1** If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

**§ 10.2.2** If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

#### **§ 10.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

### **ARTICLE 11 MISCELLANEOUS PROVISIONS**

**§ 11.1** Terms in this Agreement shall have the same meaning as those in A201-2007.

#### **§ 11.2 Ownership and Use of Documents**

Section 1.5 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

#### **§ 11.3 Governing Law**

Section 13.1 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

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§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

The Milestone Project Manager will be charged to the project at a rate of \$65/hr and will be charged to the project whether working on site or in the Milestone Main Office for time spent working on this project. The cost will be included in the overall GMP.

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201-2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:
- .4 AIA Document E202™-2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- .5 Other documents:  
(List other documents, if any, forming part of the Agreement.)

This Agreement is entered into as of the day and year first written above.

OWNER (Signature)

Doug Sprouse, Mayor  
(Printed name and title)

CONSTRUCTION MANAGER (Signature)

Sam Hollis, President  
(Printed name and title)

Init.

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING THE  
RENOVATIONS OF FOUR (4) BATHROOMS  
IN THE SPRINGDALE PUBLIC LIBRARY**

**WHEREAS**, Library Director Marcia Ransom desires to remodel four (4) bathrooms in the Springdale Public Library; and

**WHEREAS**, Hight Jackson has been retained as architects on this remodel; and

**WHEREAS**, funds have not been appropriated for the cost of this remodel.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL  
FOR THE CITY OF SPRINGDALE, ARKANSAS, that**

**Section 1.** The remodeling of four (4) bathrooms in the Springdale Public Library is hereby approved with a cost of \$200,000 to be paid out of the CIP Fund.

**Section 2.** The Library Director is hereby authorized to retain Milestone Construction Company as the general contractor to oversee the remodeling.

**PASSED AND APPROVED** this 12<sup>th</sup> day of November, 2019

ATTEST:

\_\_\_\_\_  
Doug Sprouse, Mayor

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ernest B. Cate, City Attorney



## Beth Parnell

---

**From:** Marcia Ransom <MRansom@springdalelibrary.org>  
**Sent:** Friday, January 17, 2020 1:07 PM  
**To:** Beth Parnell  
**Subject:** RE: 4 Restrooms remodel at the Library.

Sorry I missed your deadline. We're looking at approximately \$153,000 but I won't have exact figures until I hear from Milestone, probably on Monday. That includes having the project bid out and some options that had not been considered previously.

Thanks  
Marcia

I have to be out of the office for the next hour, but can be reached on my cell phone 601-5240.

**From:** Beth Parnell <[bparnell@springdalear.gov](mailto:bparnell@springdalear.gov)>  
**Sent:** Friday, January 17, 2020 11:23 AM  
**To:** Marcia Ransom <MRansom@springdalelibrary.org>  
**Subject:** 4 Restrooms remodel at the Library.

Marcia,

I am putting the Agenda together for Tuesday's committee. The Mayor would like some supplemental information to go with the Resolution page. Is the \$200,000 cost still valid? Etc.  
Would like to have the Agenda finalized by 12:00.

Thank you,

BETH PARNELL  
SECRETARY/RECEPTIONIST  
OFFICE OF THE MAYOR  
201 SPRING STREET  
CITY OF SPRINGDALE, ARKANSAS  
PH: 479.750.8114  
FX: 479.750.8559  
[BPARNELL@SPRINGDALEAR.GOV](mailto:BPARNELL@SPRINGDALEAR.GOV)  
[WWW.SPRINGDALEAR.GOV](http://WWW.SPRINGDALEAR.GOV)



**Wyman Morgan**

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**From:** Marcia Ransom <MRansom@springdalelibrary.org>  
**Sent:** Wednesday, October 30, 2019 8:18 PM  
**To:** Wyman Morgan  
**Subject:** Re: Library Restrooms

Okay. Gail from Hight Jackson and Scott from Milestone will attend to answer questions.

Thanks.

Marcia

Get [Outlook for iOS](#)

---

**From:** Wyman Morgan <[wmorgan@springdalear.gov](mailto:wmorgan@springdalear.gov)>  
**Sent:** Wednesday, October 30, 2019 11:42:19 AM  
**To:** Marcia Ransom <[MRansom@springdalelibrary.org](mailto:MRansom@springdalelibrary.org)>  
**Subject:** Re: Library Restrooms

I will try to get it on Monday night 's agenda.

Sent from my iPad

> On Oct 30, 2019, at 11:35 AM, Marcia Ransom <[MRansom@springdalelibrary.org](mailto:MRansom@springdalelibrary.org)> wrote:

>

> It's in the \$180,000 range for the four public restrooms. It could come down a little with some minor adjustments we looked at this morning.

>

>

>

> -----Original Message-----

> From: Wyman Morgan <[wmorgan@springdalear.gov](mailto:wmorgan@springdalear.gov)>

> Sent: Wednesday, October 30, 2019 10:13 AM

> To: Marcia Ransom <[MRansom@springdalelibrary.org](mailto:MRansom@springdalelibrary.org)>

> Subject: Re: Library Restrooms

>

> What is the bathroom estimate? I will get you a name for air quality tomorrow.

>

> Sent from my iPad

>

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING THE CONVEYANCE OF  
LAND OWNED BY THE CITY OF SPRINGDALE TO JHT,  
LLC, IN EXCHANGE FOR THE DEDICATION OF LAND  
FOR A PUBLIC STREET.**

**WHEREAS**, the City of Springdale owns the following real property located in the City of Springdale, Arkansas, said land being more particularly described as follows ("the City Property"), and as shown on the attached Exhibit "A":

**Tract 1 - Washington County Tax Parcel No. 815-29107-381**

Part of the Southeast Quarter of the Southwest Quarter of Section 9, Township 17 North, Range 30 West, Washington County, Arkansas, more particularly described as follows: Commencing at the Cotton Picker Spindle found at the West Sixteenth Corner of Section 9 and 16; thence along the West line of said Southeast Quarter of the Southwest Quarter, North 2°23'27" East a distance of 320.16 feet to the POINT OF BEGINNING; thence continuing North 2°23'27" East a distance of 73.82 feet to the Northern Right of Way of Don Tyson Parkway as established by AHTD Job 040527; thence along the Northern Right of Way, South 38°32'57" East a distance of 97.87 feet; thence North 87°30'26" West a distance of 64.13 feet to the POINT OF BEGINNING, and containing 0.05 acres (2,367 square feet) more or less as shown on AHTD plans referenced as Job 040527.

**Tract 2 – Washington County Tax Parcel No. 815-29107-422**

Part of the South Half of the Southwest Quarter of Section 9, Township 17 North, Range 30 West, Washington County, Arkansas, more particularly described as follows: Commencing at a Cotton Picker Spindle found at the West Sixteenth Corner of Section 9 and 16; thence along the West line of the Southeast Quarter of the Southwest Quarter of the Southeast Quarter of the Southwest Quarter of said Section 9, North 2°23'27" East a distance of 243.73 feet to the Southern Right of Way of the Don Tyson Access Road as established by AHTD Job 040527 and the POINT OF BEGINNING, thence along said Southern Right of Way, South 42°26'05" West a distance of 19.87 feet; thence North 3°19'21" East a distance of 91.67 feet; thence South 87°30'26" East a distance of 75.42 feet to the Southern Right of Way of the Don Tyson Access Road as established by AHTD Job 040527; thence along said Southern Right of Way, South 42°26'05" West a distance of 99.68 feet to the POINT OF BEGINNING, and containing 0.08 acres (3,457 square feet) more or less as shown on AHTD plans referenced as job 040527.

**WHEREAS**, JHT, LLC, wishes to acquire the City Property from the City of Springdale;

**WHEREAS**, JHT, LLC, in exchange for the City Property, would transfer the following property to the City of Springdale, to be dedicated as a public street ("the JHT Property"), and has shown on the attached Exhibit "B":

PART OF THE SW 1/4 OF THE SW 1/4 OF SECTION 9, TOWNSHIP 17 NORTH, RANGE 30 WEST, WASHINGTON COUNTY, ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE SW 1/4 OF THE SW 1/4 OF SAID SECTION 9; THENCE S02°23'29"W 858.32 FEET TO THE POINT OF BEGINNING; THENCE S02°23'29"W 68.61 FEET TO THE NORTH RIGHT-OF-WAY OF DON TYSON PARKWAY AS PER DOCUMENT 2014-00027648; THENCE ALONG SAID NORTH RIGHT-OF-WAY S02°23'29"W 7.97 FEET; THENCE LEAVING SAID NORTH RIGHT-OF-WAY S85°19'58"W 206.09 FEET; THENCE 103.82 FEET ALONG A CURVE TO THE LEFT WITH A RADIUS OF 72.00 FEET AND A LONG CHORD OF S44°01'30"W 95.05 FEET; THENCE S02°43'02"W 158.14 FEET; THENCE N86°33'22"W 76.01 FEET; THENCE N02°43'02"E 157.17 FEET; THENCE 213.40 FEET ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 148.00 FEET AND A LONG CHORD OF N44°01'30"E 195.39 FEET; THENCE N85°19'58"E 215.50 FEET TO THE POINT OF BEGINNING, CONTAINING 0.92 ACRES, MORE OR LESS AND SUBJECT TO ANY AND ALL EASEMENTS OF RECORD OR FACT.

**WHEREAS**, Ark. Code Ann. §14-54-302 empowers and authorizes municipalities to convey real property it owns, subject to approval by the City Council;

**WHEREAS**, the exchange of property described herein would be in the best interests of the public, and would further enhance the development potential of the property in the vicinity;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS**, that the Mayor and City Clerk of the City of Springdale, Arkansas, are hereby authorized to execute all documents necessary to effect the conveyance of the City Property to JHT, LLC, in exchange for the JHT Property, to be dedicated as a public street.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED:

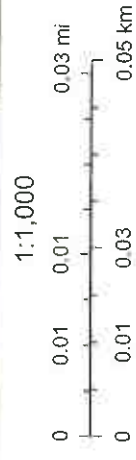
\_\_\_\_\_  
Ernest B. Cate, City Attorney

## City of Springdale Zoning Map



December 12, 2019

- | Washington Co. Parcels  | Streams   | Lakes   | Streets - All   |
|---|---|---|---|
|  |  |  |  |
| Benton Co. Parcels  | Main Channel  | Buildings   | Interstate  |
|  |  |  |  |
|  | Tributary   | Railroad  | Ramp  |
|  |  |  |  |

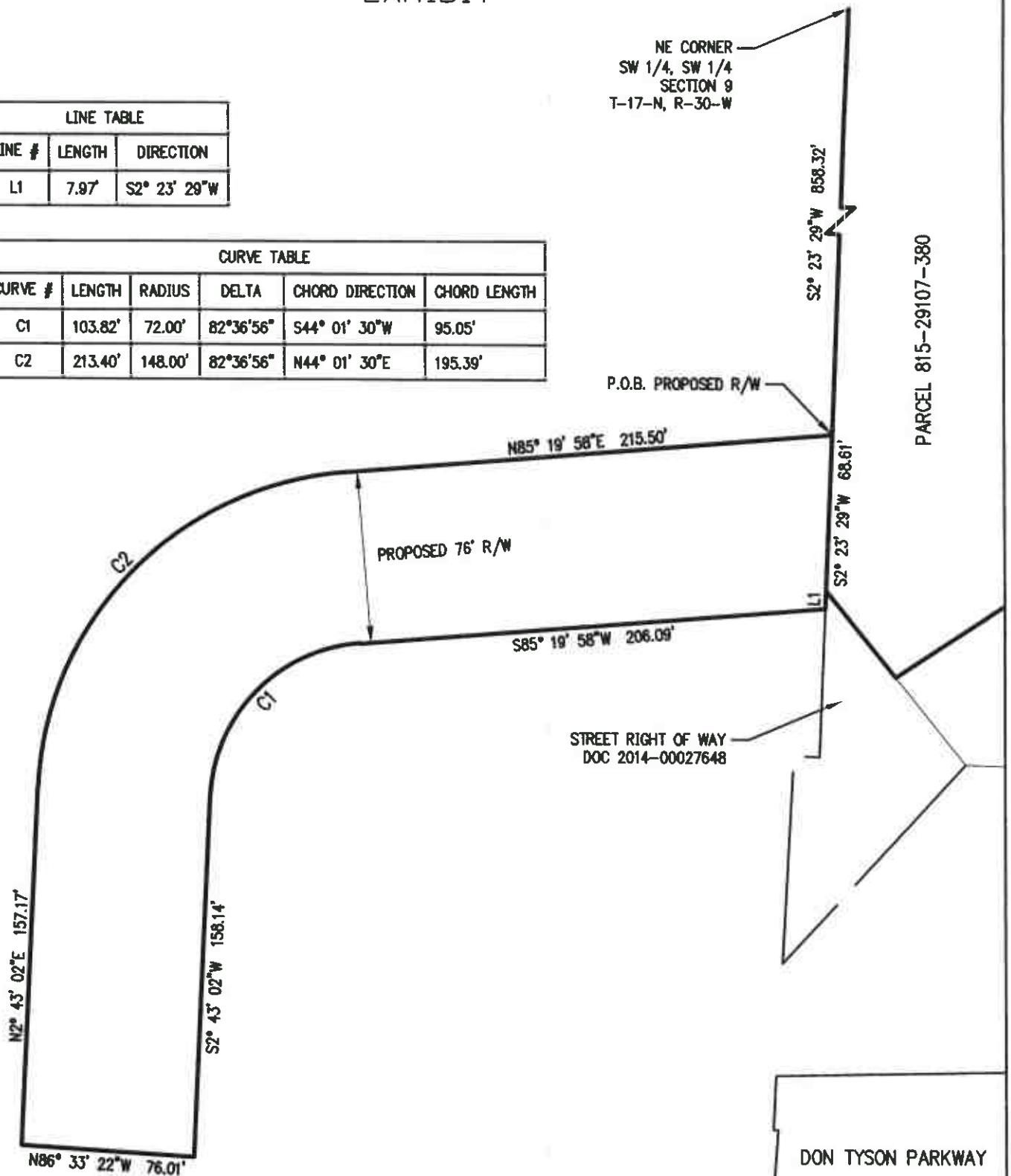


City of Springdale, Clayton Sedberry

## EXHIBIT

LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	7.97'	S2° 23' 29"W

CURVE TABLE					
CURVE #	LENGTH	RADIUS	DELTA	CHORD DIRECTION	CHORD LENGTH
C1	103.82'	72.00'	82°36'56"	S44° 01' 30"W	95.05'
C2	213.40'	148.00'	82°36'56"	N44° 01' 30"E	195.39'



NOTE:  
THIS EASEMENT EXHIBIT IS A GRAPHICAL REPRESENTATION OF THE EASEMENT DESCRIPTION,  
AND DOES NOT CONSTITUTE A BOUNDARY SURVEY.

1000 Ledgelawn Dr.  
Conway, Arkansas 72034



**Crafton Tull**  
engineering | surveying

501.328.33161 501.328.  
www.craftontul

3.

DRAWN ON 1910540-3032314154161CUCURVONNEW EXHIBIT 2.DWG  
 ANYTIME. LAST SAVED NAME: 9/29/2019 1:31:21 PM  
 LAST PLOTTED BY REVIT MACHINE: 9/29/2019 1:32:31 PM. PLOT COLOR: 67" VARIOUS COPY CHIT

PROJECT NO:	19108401	DRAWN BY:	DATE:	SHEET:	CHECKED:
			09/24/2019	1 OF 1	



**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING THE EXECUTION  
OF A CONSTRUCTION CONTRACT  
FOR THE EXTENSION OF FORD AVENUE**

**WHEREAS**, sealed bids were received for the extension of Ford Avenue,  
and

**WHEREAS**, Tri Star Contractors was the low bidder for this project at  
\$4,817,015.87

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL  
FOR THE CITY OF SPRINGDALE, ARKANSAS, that**

**Section 1.** The Mayor and City Clerk are hereby authorized to execute a  
contract with Tri Star Contractors for construction of an extension of Ford  
Avenue for \$4,817,015.87.

**Section 2.** The Mayor is authorized to approve construction change orders as  
long as the cumulative total of the change orders does not exceed 10% of the  
original contract price.

**PASSED AND APPROVED** this 28<sup>th</sup> day of January, 2020.

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ernest B. Cate, City Attorney

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AMENDING SECTION 3.5 OF THE  
PERSONNEL AND PROCEDURES MANUAL FOR THE  
CITY OF SPRINGDALE, ARKANSAS**

**WHEREAS**, Section 3.5 of the Personnel and Procedures Manual for the City of Springdale, Arkansas, contains the guidelines for appropriate conduct by City employees;

**WHEREAS**, the guidelines on appropriate conduct by City employees needs to be amended to specifically address and include an anti-bullying policy for City employees;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS**, that:

**Section 1:** Section 3.5 of the Personnel and Procedures Manual for the City of Springdale, Arkansas is hereby amended to add a new subsection, known as Section 3.5(C), to read as follows:

**C. Anti-Bullying:**

The purpose of this policy is to communicate all employees, including supervisors, managers and executives, that the City of Springdale will not in any instance tolerate bullying behavior. Employees found in violation of this policy will be disciplined, up to and including termination.

1. The City of Springdale defines bullying as repeated, health-harming mistreatment of one or more people by one or more perpetrators. Such behavior violates the City of Springdale's standards of conduct/employment policies which clearly state that all employees will be treated with dignity and respect. It is abusive conduct that includes:
  - a. Threatening, humiliating or intimidating behaviors;
  - b. Work interference/sabotage that prevents work from getting done;
  - c. Verbal abuse;
2. The City of Springdale considers the following types of behavior examples of bullying:
  - a. **Verbal bullying:** Slandering, ridiculing or maligning a person or his or her family; persistent name-calling that is hurtful, insulting or humiliating; using a person as the butt of jokes; abusive and offensive remarks;
  - b. **Electronic bullying:** Slandering, ridiculing or maligning a person or his or her family; persistent name-calling that is hurtful, insulting or humiliating; using a person as the butt of jokes; abusive and offensive remarks via text, email, social media, or any other electronic means of communication;
  - c. **Physical bullying:** Pushing, shoving, kicking, poking, tripping, assault or threat of physical assault, damage to a person's work area or property;



- d. **Gesture bullying:** Nonverbal gestures that can convey threatening messages;
  - e. **Exclusion:** Socially or physically excluding or disregarding a person in work-related activities.
3. In addition, the following examples may constitute or contribute to evidence of bullying in the workplace:
- a. Persistent singling out of one person;
  - b. Shouting or raising one's voice at an individual in public or in private;
  - c. Using obscene or intimidating gestures;
  - d. Not allowing the person to speak or express himself or herself (i.e. ignoring or interrupting);
  - e. Personal insults and use of offensive nicknames;
  - f. Public humiliation in any form;
  - g. Constant criticism on matters unrelated or minimally related to the person's job performance or description;
  - h. Public reprimands;
  - i. Repeatedly accusing someone of errors that cannot be documented;
  - j. Deliberately interfering with mail and other communications;
  - k. Spreading rumors and gossip regarding individuals;
  - l. Encouraging others to disregard a supervisor's instructions;
  - m. Manipulating the ability of someone to do his or her work (e.g. overloading, under loading, withholding information, setting deadlines that cannot be met, giving deliberately ambiguous instructions);
  - n. Assigning menial tasks not in keeping with the normal responsibilities of the job;
  - o. Taking credit for another person's ideas;
  - p. Refusing reasonable requests for leave in the absence of work-related reasons not to grant leave;
  - q. Deliberately excluding an individual or isolating him or her from work-related activities, such as meetings;
  - r. Unwanted physical contact, physical abuse or threats of abuse to an individual or an individual's property (defacing or marking up property).

Individuals who feel they have experienced bullying should report this to their supervisor or to Human Resources before the conduct becomes severe or pervasive. All employees are strongly encouraged to report any bullying conduct they experience or witness as soon as possible to allow the City of Springdale to take appropriate action.

**Section 2:** All other provisions of Section 3.5 of the Personnel and Procedures Manual for the City of Springdale, Arkansas, not specifically modified herein shall remain in full force and effect.

**PASSED AND APPROVED,** this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ernest B. Cate, City Attorney